IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(***Special Original Jurisdiction***)

TUESDAY, THE TWENTY SIXTH DAY OF APRIL
TWO THOUSAND AND FIVE

P R E S E N T

THE HON'BLE MR JUSTICE ELIPE DHARMA RAO

WRIT PETITION NO: 9492 of 2005

Between:

Chidura Musthaiah & Co., rep.by its Prioprietor, Ch.Raji Reddy,S/o. Muthaiah, R/o. Gandhi Gunj, Kamareddy, Nizamabad District.

..... PETITIONER

A N D

1 Deputy Commissioner of Proh and Excise,
Karimnagar , A.P.
2 Station House officer, Proh and Excise Station Mancherial
Adilabad .
3 Govt., of A.P., rep.by Commissioner Proh and Excise,
Nampally, Hyderabad.

..... RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ of mandamus, direction, declaration or order by declaring the action of 3rd respondent in passing the orders dt.11-2-2005 as illegal, arbitrary, discriminary unreasonable, unjust, without jurisdiction and opposed to public policy, violating of Article 14, 21 and 300-A of Constitution of India and also violative of principle of natural justice and set aside the same with costs and issue consequently directions to release the Jaggery 60.11 quintals in Cr.No.490/2003-2004 of SHO (Proh and Excise) Mancherial, District Adilabad, A.P., and pass.

Counsel for the Petitioner: MRK.M.MAHENDER REDDY

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

The Court at the stage of admission made the following: (order follows 2nd page)

O R D E R :

This writ petition is filed to declare the action of the third respondent in passing the orders dated 11-2-2005 as illegal, arbitrary, discriminatory, unreasonable, unjust, without jurisdiction and opposed to public policy, violative of Article 14, 21 and 300-A of the Constitution of India and violative of principles of natural justice and set aside the same and consequently to issue directions to release the 60.11 quintals of jaggery seized in Cr.No.490/2003-04 of SHO (Prohibition and Excise) Mancherial of Adilabad district.

The petitioner-company is doing commission business of agricultural products like paddy, maize, jaggery etc., with valid permits and sold 60.11 quintals of jaggery on credit to M/s. Laxmi Kirana Merchants, Kataram, Karimnagar district. The said jaggery was transported on Eicher Van bearing No.AP-25-T 8212 on hire with all valid permits but on 12-10-2003 the second respondent seized the said jaggery at Burgupalli village thanda of Jaipur Mandal of Adilabad district under a cover of panchanama. Thereafter the first respondent issued show cause notice no.662/2003/Proh.& Excise/B2 to the petitioner on 20-1-2004. Pursuant to the said notice, the petitioner submitted his explanation to the first respondent but without considering his explanation the first respondent confiscated the said jaggery and passed an order on 27-5-2004. Assailing the order dated 27-5-2004 passed by the first respondent, the petitioner preferred an appeal to the third respondent. But the

third respondent had dismissed the appeal and passed an order dated 11-2-2005 in Cr.No. 13640/2004/CPE/D4.

Questioning the order dated 11-2-2005 passed by the third respondent in Cr.No.13640/2004/CPE/D4, the petitioner filed the present writ petition on the ground that the second respondent has no right to seize the jaggery, which was transported with valid permits, waybills, transport and agriculture market committee permits etc., and sold to a bonafide purchaser under valid documents. The petitioner contends that the jaggery is not prohibited and it can be sold or purchased with permit and mere suspicion cannot be a crime unless it is proved or established that the owner is having knowledge to unload or use jaggery for illicit distilled liquor only at factory, whereas in the present case the driver had lost the route in the night. The analysis report of CE.No.756/2003, dated 17-12-2003 and the report dated 21-2-2004 of the Sub-Divisional Officer cannot be a ground reality to confiscate the said jaggery without hearing the petitioner and supplying its copy to the petitioner.

Heard the learned counsel for the petitioner as well as the learned Govt.Pleader for Prohibition & Excise.

After hearing both sides and without going into the merits or otherwise, I deem it appropriate to direct the respondents to reconsider the case of the petitioner if it is within the parameter of para no. 4 (iii) of the Circular instructions dated 03-11-2002 in Cr.No.4294/DPE/2001/CS passed by the Commissioner of Prohibition and Excise, A.P., Hyderabad, which is as follows:

> *(iii) " The consignment of the black jaggery be permitted without any restriction, if the same is covered by way bills/ permits issued*

by the Agricultural Market Committee and the invoices are clearly showing the names and addresses of the consignor as well as the consignee".

If the case of the petitioner is subject to the above parameters, the respondents are directed to release the jaggery within six weeks from the date of receipt of a copy of this order.

With the above direction, the writ petition is disposed of at the admission stage. No order as to costs.

APRIL26th, 2005. ----------

I S L. ELIPE DHARMA RAO , J.

To

1 The Deputy Commissioner of Prohibition and Excise, Karimnagar, Karimnagar district, A.P.
2 The Station House officer, Prohibition and Excise Station Mancherial Adilabad district.
3 The Commissioner of Prohibition and Excise, Govt.of A.P.,

Office at Nampally, Hyderabad.

4 1 CC to Govt.Pleader for Prohibition and Excise, High Court

Buildings, High Court of AP Hyderabad (OUT).

5 1 CC to Mr.K.M.Mahender Reddy, Counsel for the Petitioner,

Bar Association, High Court Buildings, Hyderabad.

6 Two CD Copies.